

**KDS draft 10/22  
M I N U T E S**

**GUARDIANSHIP AND CONSERVATORSHIP COMMITTEE**

*Friday October 19, 2012*

*Idaho Supreme Court Building - Boise, Idaho*

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**Committee members in attendance in person** Hon. Chris Bieter, Committee Chair; Hon. Scott Hansen; Hon. John Judge; Representative Grant Burgoyne, Esq.; Holly Player, Administrator, Guardianship Monitoring, Ada County; Mary Jo Butler, Legal Director, DisAbility Rights Idaho; Robert Aldridge, Esq.; Dr. Stephanie Bender-Kitz, Director, Friends in Action; Dona Butler, Supervisor, Canyon County Clerk's Office; Shelli Tubbs, Administrative Assistant, Twin Falls County Courthouse; James Cook, Esq., Deputy Director, Idaho Legal Aid Services; Sam Haws, Administrator, Idaho Commission on Aging; Kimberly Halbig-Sparks, Esq., Deputy Legal Counsel, Idaho Supreme Court (Reporter).

**Guests:** Tammy Brown, Grant Manager; Taunya Jones, Senior Research Analyst; Nanci Thaemert, Esq., Guardianship and Conservatorship Statewide Coordinator.

**Welcome and Introductions**

Judge Bieter welcomed the Committee. Committee members introduced themselves.

**Minutes from the May 18, 2012 meeting.**

The minutes from the May 18, 2012 meeting were circulated. Sam Haws moved to approve the minutes. Jim Cook seconded the motion. All voted in favor of the motion.

**Current Projects**

a) **New Statewide Coordinator:** Judge Bieter announced that Nanci Thaemert has been hired as the new Statewide Guardianship and Conservatorship Statewide Coordinator. He noted that there was a broad and very impressive group of applicants. Nanci introduced herself and gave a summary of her prior work experience which has been primarily in the child welfare area including her previous position as Statewide Guardian Ad Litem Coordinator. She is currently juggling both positions until a new coordinator can be hired. She is excited to start a new chapter in her professional life. She plans to visit the judicial districts across the state to meet those working in the guardianship and conservatorship arena; identify needs and resources needed. She welcomes suggestions from all.

b) **On-Line training:**

Nanci gave an update on the on-line training program. She reported that the number of calls coming in for assistance has reduced but they are still coming in. The Spanish version of the training has been translated but a narrator is still being identified. She anticipates the training will be completed within the next two months. The introduction page of the training is being updated. Nanci noted that efforts will be made to more widely distribute the FAQ sheet. It was suggested that the FAQ sheet could be attached to the Court Order ordering a petitioner to participate in the training. Those Orders are typically provided to petitioners when they file their guardianship or conservatorship petition. The group discussed ways to evaluate the effectiveness of the training. Judge Hansen indicated that he believes the training really helps and he feels it has upgraded the quality of the guardians/conservators. The group was asked to think about ways to evaluate the effectiveness of the training. It was noted that it would be somewhat challenging because all petitioners must take the course so there is no control group. Tammy noted that the number of reports being filed every year continues to increase.

Holly suggested that we consider adding instructions on how to fill out forms. One challenge noted was that the training would then have to be updated every time rules/ statutes are amended which could get quite expensive. Tammy also reported getting calls from pro se folks seeking help on how to fill out forms. Jim Cook reported that Legal Aid may be able to assist—they have a lot of experience converting forms into interactive documents. Holly also suggested that it might be helpful to have attorneys volunteer to conduct trainings to help assist the public with filling out forms. Bob indicated that TEPI may be able to help with training. Stephanie wondered if the Court had been contacted by any other states interested in replicating the training noting it might be an opportunity to generate income. To her knowledge, no other state has a similar type of resource available for prospective guardians and conservators. No one was aware of any such contacts with other states.

### **c) Investigative Services:**

Nanci reported on a recent contract the Court entered into with Jay Miller for “investigative services.” Essentially skip trace services to locate missing guardians/conservators and wards. Forms and instructions have been created to assist clerks with the process. Approximately 40 searches have been conducted with the individuals being located in all but 2 of the cases. The forms are not on ISTARS at this time as Nanci is overseeing the project and ensuring that we keep within budget. It does not appear that many of the clerks know about the service despite notice in E-news and an email to all of the elected clerks. More efforts will be made to ensure that clerks statewide are aware of the service.

There was a long discussion about roles in monitoring these cases. It was noted that keeping track of annual reports is dependent on clerks tickling those annual reports and it is unknown if that is being done consistently throughout the state. Another member raised the question of what role should the GAL play in the process. Further, if notices are going out by the clerk/court, is the GAL being notified? The GAL may have current address information but may not be aware that the clerk doesn't not have current information. Similarly, if there are discrepancies in accounting noted in the review process with notation to the clerk, is the GAL notified of that discrepancy? Bob commented that it is important to differentiate between the petitioning attorney and the GAL as the GAL should not be permitted to withdraw from the case. It appears

in many locations throughout the state the GAL is being permitted to withdraw from the case after the guardianship/ conservatorship is granted. It was asked how the GAL is paid and the response was that the statute says that the funds will come from the ward who often has little or no money so the GALs often do the work pro bono. Others have gotten complaints that GALs are charging way too much. One member noted that we really need to have statewide consistency but commented that it is difficult to ask attorneys to make a fifteen year commitment on a case in which it is unlikely that they will be paid. These services, however, are very important. There was a discussion about the need for state funds to pay for this service.

**d) Idaho Legal Aid GAL Pilot Project:**

Jim Cook reported on a pilot project Legal Aid is currently working on with the Supreme Court in Kootenai County and the entire 6<sup>th</sup> and 7<sup>th</sup> Districts. In cases that arise where the Court needs additional information, or an irregularity comes up in a report or no annual report is filed at all, the court may appoint a Legal Aid attorney to serve as a GAL for the ward in a limited capacity (in terms of scope of duties, hours and remuneration). The program is new and there has only been one appointment under the project so there is little to report at this time. An update will be provided at the next Committee meeting.

**e) Draft ex parte rule**

There have been ongoing difficulties regarding how to get problems/issues before the court. What communications should judges be having with auditors, interested persons, etc. Judge Bieter described a recent case in which some complained about judicial contact with the auditors as well as staff at the Guardianship Monitoring Program. Another example is a ward calling the judge's clerk and saying something is wrong in his case. What does the Court do? Share the information with all of the parties? Just the GAL? Who is staff? When is a case pending? A draft rule is currently being considered by the Juvenile Justice Advisory Team and the Children and Families in the Court Committee has discussed the need to develop such a rule given the work being done by the Family Court Services Coordinators. Judge Hansen questioned whether an ex parte rule is necessary since the judge has the ability to call a hearing with all the parties and discuss correspondence. Representative Burgoyne needed clarification if this was in a court rule or in the judicial canons. The draft ex-parte rule will be sent to the legislative and rule subcommittee for review and a recommendation to the entire Committee will be made at the next meeting.

**Time Standards**

Taunya Jones described the Court's Advancing Justice work over the past year or so. She explained efforts to achieve an optimal balance between efficiency and good case management practices to ensure cases receive the attention they need and are being handled in an efficient and timely manner. She went on to explain time standards which set forth the goals and expectations of a case. Idaho has had time standards since the 1980s and those standards are being revisited now. Periodic review keeps the Court accountable and transparent.

Idaho does not currently have any time standards specific to guardianship and conservatorship cases so Taunya asked for input on what time standards might look like in these kinds of cases. She noted that time standards have been looked at on a national level and a new Court Advancing Justice Committee will convene for the first time next week. Both on the national level and here in Idaho we are looking at time standards in a tripartite system where there are multiple tiers and looking at 75% of cases being done within one time frame; 90% of the cases being done within a longer time frame and 98% of cases being complete within a third time frame with the recognition that most cases can be handled rather quickly but there are certain cases that are simply going to take longer to complete. Taunya also described case key events that can also be tracked and how long it takes to get to those events. As these time standards are being considered, any necessary rule and statutory changes must also be considered. One goal is to identify barriers to problems. Differential case management is being explored. The committee will also be looking at systematic conditions and identifying factors that impact cases even though those conditions may not be within the court's control.

Taunya referred the group to page 41 of the handouts to look at the Model Time Standards. She recognized that coming up with time standards in guardianship and conservatorship cases is challenging since there are no current standards to compare. Several members of the Committee felt it was important to review data on how long it takes to currently process these cases before the Committee could provide any meaningful recommendations on how long they should take. Taunya said she would gather data for the Committee to review.

A number of issues were raised about trying to come up with time standards. Do you measure from when the petition is filed or served? Many of these petitions are filed pro se and the petitioner doesn't know how to serve so the case gets delayed. Failure to complete the on-line training can also cause delays. In addition, it was noted that in many of the minor guardianship matters, complex family relationships are involved and whenever possible we want to keep these cases out of court and non-adversarial. Mediation may be used. These cases should not be rushed along. Someone asked what happens if timelines are not met? Someone else noted that different types of guardianships may take longer to complete. For example, those involving individuals with developmental disabilities may take longer because the Department of Health and Welfare must first complete an evaluation committee review and report. There are not enough visitors so that too can cause delays. In addition, many of the GALs appointed have insufficient training and don't know what to do. Bob also noted that a recent Idaho Supreme Court decision regarding wards and their inability to contract may change how these guardianships are structured and it may be more time consuming to figure out how best to structure. Representative Burgoyne pointed out that we don't want the time standards to get in the way of good judges doing their jobs. Without more resources, it is difficult how we can expect more to be done.

### **Monitoring Guardianship Cases:**

The group was asked for feedback regarding what is going on in the districts with guardianship status reports. Shelli reported that not much is happening with the reports in Twin Falls. She says there is a concern about the integrity of the data tracking due dates and noted that the ISTARS reports are very hard to read. They don't know if reports are getting done timely let

alone whether concerns are being handled. They are finding glitches in the delinquencies reported in ISTARS. They have forwarded comments and suggestions to Julie.

Holly reported that Ada County recently created a master case listing dividing all cases by the month in which the appointment was made to track reports due every month. She goes through the list every month and uses post cards when reports are late. She doesn't use the ISTARS notices because the system prints out a notice to every person who has been involved in the case and it is very cumbersome to wade through the unnecessary notices. The court has started to hold status conferences for delinquent reports. Judge Bieter noted that before this intensive review process, they blissfully believed cases were all in compliance but this process revealed a number of cases in which no reports had been filed in quite some time. Holly stated that she or her assistant reads the reports to note issues or see if additional resources are needed. She forwards any problem issues to the GAL.

Judge Hansen noted that in Bingham County there is only one clerk and he is not sure what is done with the reports and whether they are read. He said she will occasionally bring questions to him about a case. He does get the conservator reports when problems are noted.

Judge Judge stated that he also has one clerk and when he started, the reports were simply getting put in the file. The clerks did not know what to look for. He now looks at them but he is not quite sure what he should be looking for either.

**Monitoring Conservatorship Cases:** Holly explained the monitoring process on the conservatorship cases for Ada County. She explained that volunteer auditors with financial backgrounds review the reports. If there are any concerns noted in the report, the volunteer sends a letter to the conservator regarding the concerns, requesting additional information, etc. If the conservator sends back an appropriate response and addresses all of the issues, nothing more is done. If the case continues to have problems, the auditors don't know what to do.

Issues that need to be addressed:

- All cases need to be tickled in ISTARS for annual report;
- Cases need to be reviewed to ensure report filed;
- There needs to be a determination regarding who reads the report and make sure they know what to look for;
- Determine how issues are handled;
- Develop a procedure for closing cases.

For the new Full Court Enterprise system, it was noted that the system should be tracking that reports have been read and that copies of the reports have been provided to the GAL.

It was noted that some judges throughout the state are signing orders waiving the requirement for filing annual reports.

### **Approaches to Issues Raised in Reports**

Judge Bieter asked for input on possible ways to handle problems which are identified in the annual reports. Who should be reading the reports? The judge? The clerk? How do we deal with any issues? Bob noted that it is also important to get information from the GAL as they might have more information. It was suggested that the GAL could file an affidavit or pleading with supplemental information.

Representative Burgoyne noted that every judicial district needs a person available to assist the guardians and conservators, receive the report, send out reminders and review the reports once they are filed. Nanci commented that this type of structure already exists in the court system for family court services coordinators, domestic violence court coordinators, etc. Representative Burgoyne commented that this type of service appears to be a state function. He encouraged the group to move forward with any proposed legislation indicating that the Legislature cannot act if folks don't come forward and identify the need. He also suggested the possibility of a short-term solution by seeking one FTE to hire someone with a role similar to Tammy Brown who has overseen the statewide review of the conservator reports. Holly suggested this be another pilot project like the one in the conservatorship arena and perhaps this would provide a short term gap filler as the research is done for a longer term solution. Finally, everyone thought it would help parties if there was an ability to pay for the training course and the ability to file pleadings electronically.

Judge Bieter summarized the discussion noting the following. First, reports are not being consistently read. Second, there needs to be the ability to accurately track whether reports are late. Three, as a longer term goal, there is a desire to hire staff to help either at a district level or a central state-wide position. Law students were identified as a possible resource. Finally, there is a need to develop the ability to pay for the on-line class electronically as well as file pleadings electronically.

The quality of the report was also discussed. There is no consistent report and many are simply not helpful and not much is learned by reading the report. Mary Jo in her working group developed a draft status report for guardians in developmental disability cases that is very detailed. Stephanie commented that if the forms aren't useful, perhaps we should reconsider whether they should still be required. If the visitor process is a more effective way of monitoring, perhaps efforts should be made to enhance that practice. If reports are used, perhaps they could be standardized and mandatory documents such as medical records could be required.

Another issue raised was the closing of cases and how to accomplish this. There is a duty to have a final hearing but cases are being closed without the final hearing. We need to clarify that these cases are still being treated as open. As a future legislative item, we should look at each type of guardianship and conservator matter (incapacitated, minor and developmental disability) and look at whether there is a legal mechanism to terminate each of these types of cases.

## **Adjourn**

Meeting adjourned at 3:20pm.

**Future meetings:**

The next meeting will be set in April. A choice of dates will be sent out to the group for input.